

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

)
)
ORGANIC CONSUMERS ASSOCIATION,)
a non-profit corporation,)
6771 South Silver Hill Drive,)
Finland, MN 55603,)
)
Plaintiff,)
)
v.)
)
SMITHFIELD FOODS, INC.,)
200 Commerce Street)
Smithfield, VA 23430,)
)
Defendant.)

2020 CA 002566 B

COMPLAINT

Plaintiff Organic Consumers Association (“OCA”) brings this action against Defendant Smithfield Foods, Inc. (“Smithfield”) and alleges the following based upon personal knowledge, information, and belief. This Complaint is on behalf of OCA and the general public, in the interests of consumers.

INTRODUCTION

1. The safety of food production has a major impact on public health and is of growing concern to consumers.
2. This is a consumer-protection case concerning deceptive food safety marketing representations about pork products. The case is brought by OCA, a non-profit, public-interest organization dedicated to consumer protection. OCA seeks no monetary damages, only an end to the deceptive marketing and advertising at issue.

3. Defendant Smithfield is the world’s largest producer of pork products, which it markets under its own name and under various other brand names.

4. Smithfield makes marketing and advertising representations to convey to consumers, including consumers in the District of Columbia, that Smithfield brand pork products (“the Products”) are the “safest” possible U.S. pork products.¹

Why Smithfield Pork?

We are committed to setting the industry standard for providing our customers with the highest quality and safest U.S. born and bred products possible. And the USDA’s certification of our management practices confirms that we are living up to our commitments.

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5. In reality, Smithfield employs production practices that result in less-safe conditions,³ effects, and Products, including the routine preventative use of medically important antibiotics, crowded conditions, the use of potentially carcinogenic drugs, and rapid slaughter methods. Such practices contribute to the emergence of widespread diseases, including those that can be transmitted from animals to humans.

6. Furthermore, Smithfield’s Products are commonly contaminated with dangerous pathogens to a degree that makes them far less than the “safest” possible U.S. born and bred

¹ Discovery may reveal that additional Smithfield brands and products should be included within the scope of the allegations in this Complaint, and Plaintiffs reserve the right to add such products.

² Smithfield Foods, Inc., *Why Smithfield?*, <http://www.smithfield.com/why-smithfield/> (last visited May 19, 2020).

³ Smithfield’s dangerous and deceptive practices recently led to one of the largest coronavirus outbreaks in the United States. *See e.g.*, Jessica Lussenhop, *Coronavirus at Smithfield pork plant: The untold story of America’s biggest outbreak*, BBC (Apr. 17, 2020) https://www.bbc.com/news/world-us-canada-52311877?utm_source=digg (“[Smithfield employees] allege early requests for personal protective equipment were ignored, that sick workers were incentivised [sic] to continue working, and that information regarding the spread of the virus was kept from them, even when they were at risk of exposing family and the broader public.”); Caitlin Dickerson & Miriam Jordan, *South Dakota Meat Plant Is Now Country’s Biggest Coronavirus Hot Spot*, The New York Times (Apr. 15, 2020) <https://www.nytimes.com/2020/04/15/us/coronavirus-south-dakota-meat-plant-refugees.html> (“[Smithfield] just decided it was more profitable to hold off on instituting any of these changes until they absolutely had to. But by then, the virus was out of control.”).

Nevertheless, Smithfield’s “Our COVID-19 Response” webpage demonstrates that the company intends to continue misleading consumers about its production practices. Smithfield Foods, *Our COVID-19 Response*, <https://www.smithfieldfoods.com/ourcovid19response> (last visited May 19, 2020) (“these actions complement the extensive safety measures in place at all our locations and are on top of the extremely hygienic and sanitary environments maintained at all times in our industry for food safety and quality purposes”).

products. The USDA frequently notifies Smithfield that pork processed product in its slaughter plants is more likely to be contaminated with *Salmonella* than similar products in slaughter plants of the same size. On numerous occasions, USDA testing of Smithfield pork has detected pathogens that are “commonly associated with human illness” and resistant to antibiotics. Many disease strains detected in Smithfield Products have been found to be resistant to antibiotics that are designated by the FDA as “highly important” or even “critically important” for human health.

7. Thus, Smithfield’s marketing and advertising—which suggests that Smithfield “set[s] the industry standard” for producing the “safest” pork products—is false and misleading.

STATUTORY FRAMEWORK

8. This action is brought under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

9. The CPPA makes it a violation for “any person” to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h). A violation occurs regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.*

10. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the

District of Columbia.” *Id.* § 28-3901(c). It “shall be construed and applied liberally to promote its purpose.” *Id.*

11. The CPPA affords OCA a right to bring this action on behalf of itself or its members, and on behalf of the general public:

A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law in the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. § 28-3905(k)(1)(C).

12. In addition, because OCA is a public-interest organization, the CPPA affords OCA the right to bring any action that an individual consumer would be entitled to bring:

[A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

13. Remedies available for any CPPA claim include “[a]n injunction against the use of the unlawful trade practice” and “[a]ny other relief which the court determines proper.” *Id.* § 28-3905(k)(2)(D), (F).

FACT ALLEGATIONS

I. Smithfield's Marketing Represents That Its Pork Products Are the "Safest."

14. Smithfield, the world's largest producer of pork products,⁴ markets and advertises the Products in the District of Columbia. It seeks to reach the District consumer base online through Facebook, YouTube, Twitter, Instagram, its company websites, and other media.

15. Smithfield's marketing targets consumers concerned with food safety, making promises of superior food safety standards.

16. Across its advertising, Smithfield makes representations that its food safety practices are superlative (hereinafter: "Food Safety Representations"). Smithfield leads consumers to believe that it far exceeds industry standards for food safety and that its Products would not be contaminated with dangerous pathogens.

17. On a page on the smithfield.com website called "Why Smithfield?," the company boasts that it is "committed to setting the industry standard for providing our customers with the highest quality and safest . . . products possible" and assures customers that Smithfield is "living up to" these commitments.⁵

18. Smithfield uses its company social media accounts to reinforce its food safety message. For example, Smithfield's YouTube videos reiterate its supposedly unwavering commitment to food safety. The video titled "Food Safety at Smithfield Foods" purportedly

⁴ See Tom Polansek, *At Smithfield Foods' slaughterhouse, China brings home U.S. bacon*, Reuters (Nov. 5, 2019), <https://www.reuters.com/article/us-china-swinefever-smithfield-foods-foc/at-smithfield-foods-slaughterhouse-china-brings-home-u-s-bacon-idUSKBN1XF0XC>; Dylan Matthews, *America's largest pork producer pledged to make its meat more humane. An investigation says it didn't*, Vox (May 8, 2018), <https://www.vox.com/science-and-health/2018/5/8/17318936/smithfield-foods-pork-pig-humane-animal-abuse-animal-welfare>; Dan Charles, *World's Biggest Pork Producer Pledges To Cover Manure Ponds*, NPR (Oct. 29, 2018), <https://www.npr.org/sections/thesalt/2018/10/29/661064123/worlds-biggest-pork-producer-pledges-to-cover-manure-ponds>.

⁵ Smithfield Foods, Inc., *supra* note 2.

teaches “how all of us at Smithfield Foods work to produce the safest pork products in the world.”⁶ The video itself doubles down on this superlative claim, opening, “At Smithfield Foods, the safety and quality of our products always comes first. . . . [W]e work hard to deliver the safest, highest-quality pork in the world.”⁷ It then describes Smithfield’s purportedly “industry-leading food safety programs.”⁸

19. Another video—again devoted to “Food Safety and Quality”—states that, because of the company’s “stringent food safety policies that we follow each and every day,” “our consumers and customers should be confident in the products that we provide to them.”⁹

20. Smithfield’s sustainability reports also make superlative food safety claims. For example, its 2018 report states that Smithfield “ensures that [Smithfield’s] food safety practices capture the latest in science and best practices”¹⁰ and that the company is “Leading the Industry” on food safety.¹¹

21. On another page of the 2018 Sustainability Report, Smithfield claims that it practices the “strictly controlled use of antibiotics to care for our animals and to provide consumers with the safest food possible.”¹²

⁶ SmithfieldFoods, *Food Safety at Smithfield Foods*, YouTube (Feb. 25, 2014), <https://www.youtube.com/watch?v=kjnfe9n7TE>.

⁷ *Id.*

⁸ *Id.*

⁹ SmithfieldFoods, *Food Safety and Quality: Smithfield Foods Sustainability Report*, YouTube (May 21, 2019), <https://www.youtube.com/watch?v=E545RsZc-Zk>.

¹⁰ Smithfield Foods, *Training*, <https://www.smithfieldfoods.com/sustainability/report/2018/food-safety-quality/our-processing-plants/training> (last visited May 19, 2020).

¹¹ Smithfield Foods, *Case Study: Leading the Industry Through Collaboration*, <https://www.smithfieldfoods.com/sustainability/report/2018/food-safety-quality/case-study-leading-the-industry-through-collaboration> (last visited May 19, 2020).

¹² Smithfield Foods, *Antibiotics Use*, <https://www.smithfieldfoods.com/sustainability/report/2018/animal-care/antibiotics-use> (last visited May 19, 2020).

II. Smithfield Utilizes Production Practices That Pose Grave Risks to Public Health.

22. Contrary to Smithfield’s representations, Smithfield sells particularly dangerous pork Products and utilizes especially hazardous production practices.

23. Of particular concern is Smithfield’s routine use of antibiotics for disease prevention in healthy animals.¹³

24. According to the Centers for Disease Control, “Antibiotic resistance is one of the greatest public health challenges of our time.”¹⁴ More than 2.8 million antibiotic-resistant infections occur in the United States each year, and more than 35,000 people die as a result.

25. In 2019, the World Health Organization (“WHO”) characterized antibiotic resistance as “one of the most urgent health risks of our time” and as an “invisible pandemic,” with the emergence of infections that are untreatable by all classes of antibiotics.¹⁵

26. The WHO Guidelines on Use of Medically Important Antimicrobials in Food-producing Animals (“WHO Guidelines”) state that “[a]ntimicrobial use in food-producing animals can lead to selection and dissemination of antimicrobial-resistant bacteria in food-producing animals, which can then be transmitted to humans via food.”¹⁶

27. The preventative use of antibiotics in healthy animals—which Smithfield engages in—has been condemned by the WHO because it contributes to the spread of antibiotic-resistant pathogens.¹⁷

¹³ *Id.*

¹⁴ *Antibiotic Resistance Questions and Answers*, World Health Organization, <https://www.cdc.gov/antibiotic-use/community/about/antibiotic-resistance-faqs.html> (last visited May 19, 2020).

¹⁵ *In the face of slow progress, WHO offers a new tool and sets a target to accelerate action against antimicrobial resistance*, World Health Organization (June 18, 2019), <https://www.who.int/news-room/detail/18-06-2019-in-the-face-of-slow-progress-who-offers-a-new-tool-and-sets-a-target-to-accelerate-action-against-antimicrobial-resistance>.

¹⁶ *WHO Guidelines on Use of Medically Important Antimicrobials in Food-producing Animals*, World Health Organization (Nov. 7, 2017), <http://apps.who.int/iris/bitstream/10665/258970/1/9789241550130-eng.pdf?ua=1>.

¹⁷ *See Stop Using Antibiotics in Healthy Animals to Prevent the Spread of Antibiotics Resistance*, World Health Organization (Nov. 7, 2017), <http://www.who.int/news-room/detail/07-11-2017-stop-using-antibiotics-in-healthy-animals-to-prevent-the-spread-of-antibiotic-resistance>.

28. The WHO Guidelines specifically note that prohibiting the preventative use of antibiotics “reduce[s] the prevalence of antimicrobial resistance in bacteria transmitted to humans,” and therefore calls for “a complete restriction of use of medically important antimicrobials for disease prevention.”¹⁸ Because Smithfield does not conform to these international health guidelines, which have been successfully implemented by other producers,¹⁹ its Products cannot be considered the “safest.”

29. Antibiotics are used extensively in Smithfield’s facilities because the crowded and unsanitary conditions impair pigs’ health and facilitate the spread of disease. The WHO recognizes that improved hygiene and animal husbandry practices can help eliminate meat producers’ dependence on antibiotics.²⁰

30. Crowded, pharmaceutical-dependent farming practices, such as those employed by Smithfield, are not only drivers of antibiotic resistance, but they have been identified by experts as a root cause of pandemics.²¹

31. Epidemiologists agree that practices used by companies like Smithfield significantly contribute to the emergence of zoonoses (diseases capable of animal-to-human transmission).

32. Some of the pharmaceuticals used by Smithfield pose additional dangers to human health, including cancer.

33. In 2018, an undercover investigation revealed²² that Smithfield doses its pigs with carbadox, a dangerous drug that has been banned in pork production in the European Union due

¹⁸ *Id.*

¹⁹ *See id.*

²⁰ *Id.*

²¹ *See e.g.*, Paul Shapiro, *One Root Cause of Pandemics Few People Think About*, *Scientific American* (March 24, 2020) <https://blogs.scientificamerican.com/observations/one-root-cause-of-pandemics-few-people-think-about/>.

²² *See* Matthews, *supra* note 4.

to its potentially carcinogenic effects in humans.²³ The FDA has moved to ban the use of carbadox in pork production, warning that “carbadox could expose consumers to substances of carcinogenic concern.”²⁴

34. Further dangers to human health stem from Smithfield suppliers’ use of ractopamine.²⁵ The feed additive has demonstrably ill effects on human kidney cells²⁶ and the cardiovascular system.²⁷ In fact, ractopamine poses such pronounced dangers for human health that 122 countries, including China, Russia, and the entire European Union, have completely banned its use.²⁸

35. Smithfield also uses dangerously rapid slaughter and processing speeds, which increase the risk of contamination.

36. Smithfield participated in FSIS’s Hazard Analysis Critical Control Point (“HACCP”) Inspection Models Project (“HIMP”).²⁹ HIMP was a model pilot program for the New

²³ Stacy Sneeringer, Maria Bowman, & Matthew Clancy, *The U.S. and EU Animal Pharmaceutical Industries in the Age of Antibiotic Resistance*, United States Department of Agriculture Economic Research Service (May 2019), <https://www.ers.usda.gov/webdocs/publications/93179/err-264.pdf?v=1728.4>; European Chemicals Agency, *Carbadox*, <https://echa.europa.eu/substance-information/-/substanceinfo/100.027.163> (last visited May 19, 2020) (“Danger! According to the harmonised [sic] classification and labelling (CLP00) approved by the European Union, this substance may cause cancer”).

²⁴ U.S. Food and Drug Administration, *Questions and Answers regarding Carbadox* (July 31, 2019) <https://www.fda.gov/animal-veterinary/product-safety-information/questions-and-answers-regarding-carbadox>.

²⁵ Smithfield Foods, Inc., *2017 Sustainability Report* 51 (2017), <https://www.smithfieldfoods.com/pdf/past-reports/smithfield-2017-sustainability-report.pdf>; see also KyoungA Ko et al., *Sulfation of ractopamine and salbutamol by the human cytosolic sulfotransferases*, 152 *J. Biochem.* 275 (Sept. 2012) (Compounds like ractopamine “pose a potential health risk to humans when residual feed additives enter the body through dietary meat consumption.”).

²⁶ Wen-Chi Chen et al., *Potential Genitourinary Toxicity and Lithogenic Effect of Ractopamine*, 3 *J. of Food & Nutrition Res.* 670 (2015).

²⁷ See Jeremy Marchant-Forde et al., *The effects of ractopamine on the behavior and physiology of finishing pigs*, 81 *J. Animal Sci.* 416 (2003); Rosangela Poletto et al., *Effects of a “step-up” ractopamine feeding program, sex, and social rank on growth performance, hoof lesions, and Enterobacteriaceae shedding in finishing pigs*, 87 *J. Animal Sci.* 304 (2009); Rosangela Poletto et al., *Aggressiveness and brain amine concentration in dominant and subordinate finishing pigs fed the beta-adrenoreceptor agonist ractopamine*, 88 *J. Animal Sci.* 3107 (2010); Rosangela Poletto et al., *Behavior and peripheral amine concentrations in relation to ractopamine feeding, sex, and social rank of finishing pigs*, 88 *J. Animal Sci.* 1184 (2010).

²⁸ *Id.*

²⁹ See U.S. Dep’t of Agric. Food Safety & Inspection Serv., *List of Participating Plants* (Mar. 23, 2020), <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/HIMP-list-of-participating-plants>.

Swine Inspection System (“NSIS”) rules, promulgated by the Trump Administration. The rules prevent and preclude federal government inspectors from performing the mandated critical appraisal of animals before slaughter, and of carcasses and their parts after slaughter, while increasing slaughter-line speed limits. This endangers both workers and food safety, as workers rush to slaughter and process at the higher speeds. Carcasses move swiftly by, making it less likely that defects, disease, and other issues will be caught by government inspectors, and increasing the possibility that dangerous issues will be deliberately ignored for the sake of profit and efficiency. For example, one former USDA hog inspector said that pig carcasses moved so quickly that he and the “plant-paid inspectors” were unable to detect fecal contamination, which is “an important indicator for E. coli and salmonella.”³⁰ There are several Smithfield plants that the FSIS projects are likely to switch over to NSIS.

37. In a Smithfield plant that supplies pork to D.C. consumers, Smithfield fired an employee in retaliation for reporting food safety concerns, including the packaging and shipment of spoiled and contaminated products.³¹

38. USDA reports regarding the prevalence of pathogens in Smithfield plants further call Smithfield’s food safety marketing claims into question.

39. On numerous occasions, the USDA has notified Smithfield that pork processed in its slaughter plants is more likely to be contaminated with *Salmonella* than similar products in slaughter plants of the same size. USDA tests of Smithfield pork have detected pathogens that are “commonly associated with human illness” and resistant to antibiotics, including antibiotics

³⁰ Kimberly Kindy, *Pork industry soon will have more power over meat inspections*, Washington Post (Apr. 3, 2019), https://www.washingtonpost.com/business/economy/pork-industry-soon-will-have-more-power-over-meat-inspections/2019/04/03/12921fea-4f30-11e9-8d28-f5149e5a2fda_story.html.

³¹ Accordingly, Smithfield’s claims that its food safety policies are “stringent” and followed “each and every day” are false and misleading. See e.g., Michael Futch, *Former Smithfield Packing Co. worker claims wrongful termination in lawsuit*, Fay Observer (Feb. 14, 2015), <https://www.fayobserver.com/article/20140214/News/302149659>.

closely related to those used by Smithfield. Many disease strains detected in Smithfield Products have been found to be resistant to antibiotics that are designated by the FDA as “highly important” or even “critically important” for human health.

40. Companies can and do produce pork without using the particularly dangerous methods employed by Smithfield such as preventative antibiotic use, crowded conditions, the use of carcinogenic drugs, and rapid slaughter. Thus, Smithfield’s Food Safety Representations—*e.g.*, that it produces the “safest” possible pork through “stringent” “industry leading” food safety practices using the “latest in science and best practices”—are demonstrably false and misleading.

III. Smithfield’s Representations Are Material and Misleading to Consumers.

41. Smithfield’s Food Safety Representations are not only false; they are material and misleading to consumers.

42. Consumers care deeply about food safety and rely on representations like those made by Smithfield to identify animal products that conform to higher food safety standards. Smithfield itself has recognized that food safety is a “material issue” of significant concern to consumers and has an important bearing on consumer purchasing decisions.³²

43. Consumer survey evidence further demonstrates that pork safety is material. For example, in one survey, more than 80% of surveyed consumers indicated that they are willing to pay more for safer pork products.³³ This proportion was even higher among certain demographics,

³² See Smithfield Foods, *Materiality Analysis*, <https://www.smithfieldfoods.com/sustainability/report/2018/governance-management/materiality-analysis> (last visited May 19, 2020) (listing “[f]ood safety” as one of the most material concerns to Smithfield’s “stakeholders.”) Smithfield defines its “stakeholders” to include “the end consumers of our products.” Smithfield Foods, *Stakeholder Engagement*, <https://www.smithfieldfoods.com/sustainability/report/2018/governance-management/stakeholder-engagement> (last visited May 19, 2020).

³³ Gay Y. Miller & Laurian J. Unnevehr, *Characteristics of Consumers Demanding and Their Willingness to Pay for Certified Safer Pork*, 19 *J. Agribusiness* 101, 109–10 (2001).

including households with children, lower-income individuals, African Americans, and older adults.³⁴

44. A consumer survey specifically about consumer perceptions of pork safety found that more than 60% of consumers were “very” or “somewhat concerned” about “the possibility of foodborne illness from microorganisms such as *Salmonella*, *E. coli*, and toxoplasmosis” when they “buy and prepare pork.”³⁵

45. Consumers are concerned that the use of antibiotics in animals raised for food contributes to the growth of antibiotic-resistant bacteria that threaten human and animal health. Consumers also are concerned that antibiotics are used in industrial animal agriculture because the animals, including pigs, are subjected to treatment and conditions that make them sick.

46. Consumers expect, at a minimum, that products marketed with Smithfield’s Food Safety Representations are produced in conformance with international guidelines regarding antibiotics use, produced without the use of potentially carcinogenic drugs, have lower-than-average rates of *Salmonella* contamination, and are not contaminated with particularly dangerous disease strains.

47. Likewise, consumers believe that products marketed with Smithfield’s Food Safety Representations are not made under crowded, unsanitary, pharmaceutical-dependent, and dangerously rapid production conditions.

48. Because Smithfield sells pork products that are not the “safest” possible and utilizes especially hazardous production practices (*see supra* part II), its Products marketed with Smithfield’s Food Safety Representations are misleading to consumers.

³⁴ *Id.* at 110.

³⁵ Miller & Unnevehr, *supra* note 33, at 108.

PARTIES

49. Defendant Smithfield Foods, Inc. is incorporated in Delaware and has its principal executive office in Smithfield, Virginia. Smithfield produces, processes, markets, and distributes fresh, frozen, and value-added pork products.

50. Smithfield's Products are available in a wide variety of national supermarket chains, regional stores, and other retail outlets, including stores in the District.

51. Plaintiff OCA is a § 501(c)(3) non-profit public-interest organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, children's health, corporate accountability, and environmental sustainability. OCA formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture's proposed national regulations for organic food. In its public education, network-building, and mobilization activities, OCA works with a broad range of public interest organizations to challenge industrial agriculture and corporate globalization, and to inspire consumers to "Buy Local, Organic, and Fair Made." OCA focuses on promoting the views and interests of consumers, including the United States' estimated 50 million organic and socially responsible consumers. OCA's media team provides background information, interviews, and story ideas to media producers and journalists on a regular basis. OCA represents and advances the rights and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. OCA uses funds it raises to protect the environment by promoting regenerative, organic, and/or sustainable agriculture. As part of this work, OCA has engaged in efforts to educate consumers about the realities of industrial pork production. OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices to benefit consumers. OCA's website, publications, public education, research, network building, and

mobilization activities provide an important service to consumers and community activists every month.

52. On May 17, 2020, OCA purchased a Smithfield brand tenderloin product and a Smithfield brand loin roast product at a Walmart store in the District.

53. OCA purchased the Products in order to evaluate Smithfield's marketing and advertising claims regarding safety. The packaging identified the products as coming from FSIS establishment number 221A, a slaughter and processing plant in Smithfield, Virginia. OCA determined, through its evaluation of the products, that these products originated from a slaughter plant that the USDA has found, in numerous reporting periods, to vastly exceed "industrywide" rates of *Salmonella* contamination. For example, OCA has determined that on one occasion, the USDA reported rates of *Salmonella* contamination in the plant that were over twice as high as industrywide rates for every type of pork product tested. In that reporting period, the USDA found that 100% of certain Smithfield product types tested positive for *Salmonella*. OCA's evaluation has further found that, on numerous occasions, USDA testing at this plant detected *Salmonella* strains that are "commonly associated with illness" and strains resistant to highly important antibiotics.

JURISDICTION AND VENUE

54. This Court has personal jurisdiction over the parties in this case. OCA performs its work throughout the United States, including in the District of Columbia. Some of OCA's staff, including its political director, reside and work in or near the District. OCA has members who reside in the District.

55. This Court has personal jurisdiction over Smithfield because Smithfield has purposefully directed its conduct to the District and has availed itself of the benefits and protections of District of Columbia law.

56. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq.*

57. Venue is proper in this Court because Smithfield aims marketing and advertising at consumers within the District. Smithfield internet advertising is accessible in the District. Smithfield pork products can be, and are, purchased in the District by District consumers.

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

58. OCA incorporates by reference all the allegations of the preceding paragraphs of this Complaint.

59. OCA is a non-profit, public-interest organization that brings these claims in its individual and representative capacities, on its own behalf, and on behalf of affected consumers and the general public. *See* D.C. Code § 28-3905(k)(1)(C), (D)(i).

60. Through § 28-3905(k)(1)(C), the DC CPPA allows for non-profit organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of Constitutional standing under Article III.

61. Through § 28-3905(k)(1)(D)(i), the DC CPPA explicitly allows for public-interest organizational standing even beyond that which is afforded pursuant to § 28-3905(k)(1)(C) and allows a public-interest organization to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

62. Smithfield is a “person” and a merchant that provides “goods” within the meaning of the CPPA. See *id.* § 28-3901(a)(1), (3), (7).

63. Smithfield has advertised and marketed the Products with phrases such as “safest . . . products possible” and “the safest pork products in the world,” when, in fact, Smithfield sells pork products that are not the “safest” and utilizes especially hazardous production practices. Thus, Smithfield has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, in in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” See *id.* § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

64. Plaintiff OCA hereby demands a trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff OCA prays for judgment against Smithfield and requests the following relief:

- a. A declaration that Smithfield’s conduct is in violation of the CPPA;
- b. An order enjoining Smithfield’s conduct found to be in violation of the CPPA; and
- c. An order granting Plaintiff costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

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